

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TORREY BROWN,

Petitioner,

v.

Civil Case No. 4:06-CV-14546

HONORABLE PAUL V. GADOLA

UNITED STATES DISTRICT JUDGE

SHERRY BURT,

Respondent,

OPINION AND ORDER OF SUMMARY DISMISSAL

Torrey Brown, (“Petitioner”), presently confined at the Southern Michigan Correctional Facility in Jackson, Michigan, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on October 17, 2006. On October 19, 2006, Magistrate Judge R. Steven Whalen signed an “Order to Correct Deficiency,” in which petitioner was ordered to submit a \$ 5.00 fee for filing a habeas corpus petition or an application to proceed *in forma pauperis* within twenty-one days of the order. For the reasons stated below, the petition for writ of habeas corpus is dismissed without prejudice because of Petitioner’s failure to comply with an order of the Court.

I. Discussion

Petitioner’s application is subject to dismissal, because he failed to comply with the order of deficiency by either submitting the \$ 5.00 filing fee or an application to proceed *in forma pauperis* within the time allotted in the deficiency order.

If a prisoner who seeks habeas corpus relief does not comply with a district court’s directions in a deficiency order regarding the prisoner’s failure to pay the full filing fee and his failure to provide the required documentation to apply to proceed *in forma pauperis*, the district court must presume that the prisoner is not a pauper, assess the full filing fee, and dismiss the case for want of

prosecution. *See Gravitt v. Tyszkiewicz*, 14 Fed. Appx. 348, 349 (6th Cir. 2001) (citing *McGore v. Wrigglesworth*, 114 F. 3d 601, 605 (6th Cir. 1997)). The deficiency order clearly stated that petitioner was required to submit either the \$ 5.00 filing fee or an application to proceed *in forma pauperis*. The deficiency order also expressly warned petitioner that failure to comply with the order could result in the dismissal of his action. Because petitioner failed to pay the filing fee or submit the required application to proceed *in forma pauperis*, his petition is subject to dismissal for want of prosecution. *Gravitt*, 14 Fed. Appx. at 349; *see also Brewer v. Jones*, No. 2006 WL 752597, *1 (E.D. Mich. March 20, 2006).

II. Conclusion

Based upon the foregoing, **IT IS HEREBY ORDERED** that the Petition for Writ of Habeas Corpus is **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED.

Dated: December 18, 2006

s/Paul V. Gadola
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on December 18, 2006, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

_____,
and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Torrey Brown.

s/Ruth A. Brissaud
Ruth A. Brissaud, Case Manager
(810) 341-7845